

¹ Preliminary Hearing, March 9, 2000; p. 4.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds:

1. The preliminary hearing Order should be affirmed.
2. On March 30, 1998, claimant experienced back pain when she slipped and fell while working for respondent. After a short course of conservative medical treatment from the company-authorized clinic, claimant was discharged from treatment and released to return to work without restrictions on May 1, 1998. The clinic's May 1, 1998 office notes read:

. . . At this time, the patient is returned to work without restrictions. She is encouraged, however, to continue with her stretching exercises. She does not need to return to OccuMed unless she has any further problems.
3. Claimant continued to work for respondent until she was laid off in December 1998. During that period, claimant did not return to the doctor for additional treatment. After being on unemployment, claimant returned to work for respondent in late July or early August 1999. Claimant testified that her back symptoms worsened and that she then requested additional medical treatment.
4. On September 7, 1999, claimant returned to the company-authorized clinic. On that date, claimant gave a history that she had been doing very well but that she recently had developed low back pain while sitting in a canvas chair. The clinic's notes read:

. . . This 52 year old female reports she was doing very well and then she went and watched her children play a game and was sitting in a canvas chair and developed pain again in the mid 3-4 region, radiation to the left anterior thigh. This patient has had this long term. It is time we go ahead and do a MRI. I have scheduled a MRI.
5. Two years have elapsed since the March 30, 1998 incident. The medical records presented at the preliminary hearing do not specifically address the question of whether claimant's present symptoms are related either to her work or to the March 30, 1998 incident. The medical records are equivocal. Considering the record compiled to date, the Appeals Board agrees with the Judge that claimant has failed to prove that her present back condition and need for medical treatment are related to the March 1998 work-related incident.
6. Workers have the burden of proof to establish their rights to compensation and to prove the various conditions upon which those rights depend.²

² K.S.A. 1999 Supp. 44-501(a).

7. "Burden of proof" means the burden to persuade the trier of facts by a preponderance of the credible evidence that a party's position on an issue is more probably true than not when considering the whole record.³

8. Because claimant has failed to establish the relationship between the March 1998 work-related accident and her present need for medical treatment, the request for benefits should be denied.

9. As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification.⁴

WHEREFORE, the Appeals Board affirms the March 10, 2000 preliminary hearing Order entered by Judge Howard.

IT IS SO ORDERED.

Dated this ____ day of May 2000.

BOARD MEMBER

c: Timothy A. Short, Pittsburg, KS
D'Ambra M. Howard, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director

³ K.S.A. 1999 Supp. 44-508(g).

⁴ K.S.A. 1999 Supp. 44-534a(a)(2).